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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,070	04/05/2001	Jenny A. Tyler	21087000100	7266
22434	7590	02/27/2006	EXAMINER	
BEYER WEAVER & THOMAS LLP			JUNG, WILLIAM C	
P.O. BOX 70250			ART UNIT	
OAKLAND, CA 94612-0250			PAPER NUMBER	
			3737	

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/828,070	TYLER, JENNY A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William Jung	3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed December 12, 2005 have been fully considered but they are not persuasive.

After further consideration of the applicant's remarks, examiner respectfully disagrees. In regards to claims 1 and 6, the applicant has amended the claims to include limitation of "numerically" quantifying the MR parameter on a pixel-by-pixel basis. The new limitation as argued by the applicant distinguishes over the prior art or record, the limitation merely states the quantification of images from MRI. Lang et al disclose imaging a region of interest to differentiate viable tissue, i.e. image intensity differentiation to contrast the different types of tissues (col. 2, lines 7-14). By definition, the image data is a numerical pixel intensity mapping. Therefore, Lang et al meet the numerically quantifying limitation. Examiner maintains the previous rejection from the office action dated August 9, 2005 and repeated below.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by *Lang et al* (US 5,671,741).

Lang et al anticipate all claimed features in claims 1-3 and 6-8.

**Claims 1 and 6:** Lang et al disclose a method for analyzing injured tissue and evaluating quality of repaired tissue based on quantized magnetic resonance (MR) data using an MRI measurement acquisition system comprising the steps of a selecting at least one MR parameter to characterize injured tissue (col. 2, lines 7-19), selecting a suitable pulse sequence to calculate and quantify that selected MR parameter (col. 2, lines 13-16), using the selected pulse sequence, acquiring multiple sets of MR signals from the injured tissue at an unchanged position relative to the measurement acquisition system (col. 2, lines 20-34), calculating and quantifying the magnetic resonance parameters on a pixel by pixel basis, determining biological properties of interest of repaired tissue structure by biological means including at least one of histological, biochemical, histochemical, and biomechanical, and correlating quantitative ranges of the selected MR parameters with selected biological properties of interest to determine extent of injury or state of tissue repair (col. 2, lines 35-48; col. 8, lines 25-47).

**Claims 2 and 7:** Lang et al further disclose that the MR parameter described above includes  $T_1$ ,  $T_2$ , magnetization transfer and ratio (MT and MR are function of gradient echo technique where the gradient echo B1 is a ratio and transfer from the magnetic field of the MR system  $B_0$  (col. 7, line 34 – col. 8, line 47).

**Claims 3 and 8:** Lang et al disclose that the above method can be applied to musculoskeletal tissue, which includes soft bone such as cartilages and ligaments (col. 5, lines 52-55).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4, 5, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Lang et al* as applied to claims 1-3 and 6-8 above, and further in view of *Farace et al* (US 5,995,863).

Lang et al substantially disclose all claimed features in claims 4, 5, 9, and 10. However, Lang et al is silent as to display method. In Farace et al, displaying of MR image data includes display monitor where the images may be color or gray scale (black and white) to differentiate the type of tissues being displayed. Therefore, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to apply the teachings of Farace et al's display method of MRI data to Lang et al's tissue differentiation to achieve the claimed invention.

### ***Conclusion***

6. This is a request for continued examination (RCE) of applicant's earlier Application No. 09/828,070. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Jung, Ph.D. whose telephone number is 571-272-4739. The examiner can normally be reached on Mon-Fri 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WJ

February 20, 2006

  
BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
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